

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANTWAUN FREEMAN,
Plaintiff,

v.

LT MOORE, *et al.*,
Defendants.

:
:
:
:
:
:
:

CIVIL ACTION NO. 23-CV-2641

ORDER

AND NOW, this 9th day of April, 2024, upon consideration of Defendant Lt. Moore's Motion to Dismiss (ECF No. 28) and Plaintiff Antwaun Freeman's Response thereto (ECF No. 30), and upon an independent screening of the Amended Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), it is **ORDERED** that:

1. Moore's Motion is **GRANTED IN PART** and **DENIED IN PART** for the reasons stated in the Court's accompanying Memorandum as follows:
 - a. The Motion is **DENIED** as to Freeman's excessive force claim against Lt. Moore.
 - b. The Motion is **GRANTED** as to the balance of Freeman's claims against Moore, which are **DISMISSED WITHOUT PREJUDICE**.
2. Freeman's claims against Defendant Christopher are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), **except for** Freeman's excessive force claim against Christopher.
3. If Freeman believes that he can cure the defects in the claims that the Court dismissed from this case, he may file a second amended complaint within thirty (30) days of the date of this Order. Any second amended complaint must identify the defendants in the caption

and must state all of the factual bases for Freeman's claims against each defendant by specifying the "who," "what," "where," "when," and "how" of each claim. The second amended complaint shall be a complete document that does not rely on the initial Complaint, Amended Complaint or other papers filed in this case to state a claim. **If Freeman files a second amended complaint and still intends to proceed on the claims the Court did not dismiss, i.e., his excessive force claims against Defendants Moore and Christopher, he must replead those claims including all of the facts supporting those claims or they will not be considered part of this lawsuit.**¹

When drafting his second amended complaint, Freeman should be mindful of the Court's reasons for dismissing the claims in his Amended Complaint as explained in the Court's Memorandum.

4. The Clerk of Court is **DIRECTED** to send Freeman a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Freeman may use this form to file his second amended complaint if he chooses to do so.

5. If Freeman files a second amended complaint, Moore shall respond in the time frame set forth in Federal Rule of Civil Procedure 15(a)(3).

6. If Freeman does not file a second amended complaint in response to this Order, the case will proceed only on Freeman's excessive force claims against Lt. Moore and Correctional Officer Christopher. If Freeman does not wish to file a second amended complaint, he may submit a notice to that effect with this case number on it, 23-2641, for faster processing.

7. If Freeman seeks to proceed on any claims against Defendant Christopher, he

¹ Freeman should note that "an amended pleading supersedes the original pleading and renders the original pleading a nullity." *Garrett v. Wexford Health*, 938 F.3d 69, 82 (3d Cir. 2019). In other words, "the most recently filed amended complaint becomes the operative pleading." *Id.* This means that if Freeman files a second amended complaint, it is that document and that document alone that governs the contours of his claims.

must also submit a completed USM-285 form for Defendant Christopher within thirty (30) days of the date of this Order so that the Court may direct service.

8. The Clerk of Court is **DIRECTED** to send another copy of the USM-285 form to Freeman.

9. If Freeman does not file a second amended complaint, Lt. Moore shall file an answer to the remaining claims within fourteen (14) days of the date of Freeman's notice that he seeks to proceed on his remaining claims or the expiration of the time for him to file a second amended complaint, whichever is earlier.

BY THE COURT:

/s/ Juan R. Sánchez

JUAN R. SÁNCHEZ, J.